

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL R. CHOUINARD

Appeal No. 1999-2425
Application 08/659,380

ON BRIEF

Before KIMLIN, OWENS and WALTZ, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the examiner's final rejection of claims 1-11, which are all of the claims in the application.

THE INVENTION

The claimed invention is directed toward a kneeler device for exerting pressure on joined carpet sections when making carpet seams. Claim 1 is illustrative:

Appeal No. 1999-2425
Application 08/659,380

1. A kneeler device for use in making carpet seams
comprising:

an elongated, generally rectangular rigid member of a width sufficient to accommodate only one knee of a user kneeling thereon with one knee, said member having a flat bottom unencumbered with obstructions so as to enable exerting pressure by the flat bottom extending across a carpet seam and under at least part of the weight of the user having one knee resting atop the member at a forward location thereon;

a curved recess formed into an upper surface at said forward end of said member adapted to receive the bent knee of the user, with a forward ridge extending across the width of the member at a forward edge of said forward edge, whereby a user can move said member forward along a seam solely by leg movement and engagement with said bent knee.

THE REFERENCES

Ashbridge 1921	1,382,883	Jun. 28,
Novak 1925	1,529,498	Mar. 10,
Gordon 1948	2,448,427	Aug. 31,
Reinhard 1954	2,677,410	May 4,
Wentz 1988	4,780,173	Oct. 25,

THE REJECTIONS

The claims stand rejected under 35 U.S.C. § 103 as

Appeal No. 1999-2425
Application 08/659,380

follows: claims 1-3, 9 and 11 over Wentz in view of Reinhard and Gordon; claims 4-8 over Wentz in view of Reinhard, Gordon and Ashbridge; and claim 10 over Wentz in view of Reinhard, Gordon and Novak.

OPINION

We reverse the aforementioned rejections.

The appellant's claims require that the kneeler device has a flat bottom. Wentz discloses a carpet seam-making kneeler device having a bottom surface which preferably is slightly convex across its width and has air vent holes (abstract). The convex surface inclines at an angle of about 15° to valleys (25 and 26) on both sides of the convex surface (col. 3, lines 26-28; figure 1). The convex surface functions to impart an upwardly concave curvature to a cooling hot glue tape below the carpet seam thereby producing a concave set in the tape such that subsequent stretching of the carpet causes the joint at the seam to be pulled level with the carpet

surface, or almost imperceptibly below the carpet surface, as opposed to having a bump or a peak, thereby producing a relatively invisible seam (col. 1, lines 17-24 and 53-57; col. 2, lines 19-21 and 29-36). Runners on each side of the convex surface keep the tool aligned with the carpet seam as the tool is scooted along by the knee and leg of the carpet installer, bearing most or all of the installer's weight (col. 1, lines 60-64).

For a teaching of a flat surface the examiner relies upon Reinhard. This reference discloses a hand-operated tool for applying binding tape to carpet and for bringing abutting edges of adjoining sections of carpeting into proper relationship so that the carpet appears seamless (col. 1, lines 28-34). The tool includes an elongated flat plate (1) having an operating handle (4) secured to its top and having a downwardly flanged longitudinal edge (2) (col. 1, line 55 - col. 2, line 6). The downwardly flanged longitudinal edge functions in feeding binding tape as the tool is moved along an edge of a carpet section being taped along its edges to prevent raveling (col. 3, lines 11-16 and 57-65; figure 2). This flanged longitudinal edge, which has a depth such that it

engages the carpet piles just above the fabric backing, also functions during laying of the carpet by pulling pile away from a carpet seam so that the carpet edges are brought into close abutting relationship and the backing tape more firmly locks the raw tufts and backing together (col. 2, lines 42-51; figure 4a).

The examiner argues that "[i]t would have been obvious to one having ordinary skill in the art to have employed a flat pressing surface on the tool taught by Wentz, since Reinhard recognizes the desirability of employing a flat pressing surface

on an operator-manipulated carpet seaming tool to provide uniform pressing force" (final rejection mailed November 11, 1997, paper no. 7, pages 2-3). The examiner does not point out, and it is not apparent, where Reinhard indicates that the surface is flat in order to provide a uniform pressing force. Regardless, even if a uniform force is beneficial in pressing Reinhard's binding tape to the carpet backing or pulling the carpet piles back from the seam, the examiner has not

explained why Reinhard's disclosure of a tool having a flat surface and a downwardly flanged longitudinal edge for providing these functions would have fairly suggested, to one of ordinary skill in the art, modifying the bottom of Wentz's tool, which has a different purpose, i.e., pressing a carpet edge onto hot glue seaming tape, in a manner which renders the tool incapable of performing the function desired by Wentz, i.e., impressing a concave set in the tape. The Gordon, Ashbridge and Novak references were not relied upon by the examiner for any teaching which would remedy this deficiency in the disclosures of Wentz and Reinhard.

In order for a *prima facie* case of obviousness to be established, the teachings from the prior art itself must appear to have suggested the claimed subject matter to one of ordinary skill in the art. See *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). The mere fact that the prior art could be modified as proposed by the examiner is not sufficient to establish a *prima facie* case of obviousness. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). The examiner must explain why the prior art

would have suggested to one of ordinary skill in the art the desirability of the modification. See *Fritch*, 972 F.2d at 1266, 23 USPQ2d at 1783-84. The examiner has not provided such an explanation. Instead, the record indicates that the examiner relies solely upon the description of the appellant's invention in the specification for a reason to modify the references so as to arrive at the claimed invention. Thus, the examiner used impermissible hindsight when rejecting the claims. See *W.L. Gore & Associates v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); *In re Rothermel*, 276 F.2d 393, 396, 125 USPQ 328, 331 (CCPA 1960). Accordingly, we reverse the examiner's rejection.

Other Issue

The examiner should consider whether Wentz would have fairly suggested, to one of ordinary skill in the art, the kneeler device recited in the appellant's claims 1 and 11. Wentz teaches

that the bottom surface "preferably" is slightly convex along

its width with air vent holes (abstract). The examiner should consider whether this disclosure of a preference for a slightly convex bottom surface with air vent holes would have fairly suggested, to one of ordinary skill in the art, a surface which is not convex and which, therefore, does not provide the benefits of a convex surface disclosed by Wentz. See *In re Kohler*, 475 F.2d 651, 653, 177 USPQ 399, 400 (CCPA 1973); *In re Mills*, 470 F.2d 649, 651, 176 USPQ 196, 198 (CCPA 1972); *In re Bozek*, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969) (References are not limited to their preferred embodiments.); *In re Wilson*, 377 F.2d 1014, 1017, 153 USPQ 740, 742 (CCPA 1967); *In re Larson*, 340 F.2d 965, 969, 144 USPQ 347, 350 (CCPA 1965); *In re Brown*, 228 F.2d 247, 249, 108 USPQ 232, 234 (CCPA 1955) (*Prima facie* obvious to eliminate a feature along with its disclosed function). The examiner also should consider whether Wentz's teaching that the disclosed kneeler differs from the prior art by having a convex bottom (col. 1, lines 14-24) would have fairly suggested, to one of ordinary skill in the art, a carpet seam-making kneeler having a bottom which, instead of being convex and providing the

Appeal No. 1999-2425
Application 08/659,380

benefit of a convex bottom disclosed by Wentz, is simply flat.

DECISION

The rejections under 35 U.S.C. § 103 of claims 1-3, 9 and 11 over Wentz in view of Reinhard and Gordon, claims 4-8 over Wentz in view of Reinhard, Gordon and Ashbridge, and claim 10 over Wentz in view of Reinhard, Gordon and Novak, are reversed.

REVERSED

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EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
TERRY J. OWENS)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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THOMAS A. WALTZ)	
Administrative Patent Judge)	

Appeal No. 1999-2425
Application 08/659,380

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Appeal No. 1999-2425
Application 08/659,380

John R. Benefiel
280 Daines Street
Suite 100 S
Birmingham, MI 48009-6244